

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTONIO SANCHEZ FRANKLIN,

Petitioner, :

Case No. 3:04-cv-187

- VS -

NORMAN ROBINSON, Warden,

Respondent. :

Magistrate Judge Michael R. Merz

**DECISION AND ORDER DENYING WITHOUT PREJUDICE
PETITIONER'S PRO SE MOTIONS TO DISCHARGE COUNSEL
AND FOR RELIEF FROM JUDGMENT**

This capital habeas corpus case is before the Court on Petitioner's *pro se* Motions to Discharge ["Rid"] Counsel (Doc. No. 143) and for Relief from Judgment (Doc. No. 145).

On October 10, 2012, the United States Court of Appeals for the Sixth Circuit stayed issuance of its mandate on its affirmance of the denial of the writ so that Petitioner could seek review in the United States Supreme Court by writ of certiorari (Doc. No. 141). Petitioner's case is now docketed in the Supreme Court as Case No. 12-7849 (Doc. No. 142) and the Court is advised by counsel for both parties that the petition is fully briefed and awaiting decision.

Because an appeal is still pending, this Court lacks authority to grant relief from judgment. Filing a notice of appeal divests the District Court of jurisdiction over a case and vests jurisdiction in the Circuit Court of Appeals until the district court receives the mandate of the court of appeals. *Marrese v. American Academy of Osteopathic Surgeons*, 470 U.S. 373 (1985); *Pickens v. Howes*, 549 F.3d 377, 381 (6th Cir. 2008); *Pittock v. Otis Elevator Co.*, 8 F.3d

325, 327 (6th Cir. 1993); *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993); *Cochran v. Birkel*, 651 F.2d 1219, 1221 (6th Cir. 1981).

Under Fed. R. Civ. P. 62.1(a)(2), this Court has authority to deny a motion for relief from judgment even though an appeal is pending. The Court wants to give Petitioner an opportunity to discuss a possible motion for relief from judgment under *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012), on which he would have the assistance of counsel. Therefore both pending Motions are DENIED without prejudice to their renewal once the mandate has issued from the Sixth Circuit.

March 25, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge